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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Kim Renee Brummer,

Case No.

Plaintiff,

V.

Biotronik, Inc.; Roe "Distributor" Corporation 1; Does 1-20, inclusive; and Roe Corporations 2-20, inclusive.

**DEFENDANT'S NOTICE OF
REMOVAL PURSUANT TO 28 U.S.C.
§§ 1332, 1441(a), AND 1446**

(DIVERSITY)

Defendants.

PLEASE TAKE NOTICE that Defendant Biotronik, Inc. (“Biotronik”) hereby removes this action, *Kim Renee Brummer v. Biotronik, Inc., et al.*, Case No. A-22-852420-C, Eighth Judicial District Court, Clark County, Nevada, to the United States District Court for the District of Nevada, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Biotronik respectfully states:

1. Kim Renee Brummer (“Plaintiff”) filed her Complaint in the State Court on May 11, 2022.

2. Biotronik received a copy of the Summons and Complaint on or about May 12, 2022. The Summons and Complaint are attached hereto as **Exhibits B and C**, respectively.

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Jurisdiction and Basis for Removal

3. This Notice of Removal is timely because it is being filed within 30 days after
service of the Summons and Complaint. *See* 28 U.S.C. § 1446(b)(1); *Murphy Bros. Inc. v.*
Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999).¹ The time for Biotronik to answer,
move, or otherwise plead with respect to the Complaint has not yet expired. *See Exhibits*
B, C; Nev. R. Civ. P. 12(a).

4. This Court has subject-matter jurisdiction pursuant to 8 U.S.C. § 1332(a)(1),
which provides that “[t]he district courts shall have original jurisdiction of all civil actions
where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between
citizens of different states.”

5. Upon information and belief, Plaintiff is a citizen of the United States.
Ehrman v. Cox Commc’ns, Inc., 932 F.3d 1223, 1227 (9th Cir. 2019) (“[A] defendant’s
allegations of citizenship may be based solely on information and belief.”); *Kantor v.*
Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983) (“To show state citizenship
for diversity purposes under federal common law a party must (1) be a citizen of the United
States, and (2) be domiciled in the state.”).

6. Plaintiff is an individual who presently resides in Clark County, Nevada. *See*
Complaint at ¶ 1.

7. Plaintiff has resided in Clark County, Nevada, since at least 2016. *See*
Complaint at ¶¶ 1, 7.

8. Public records show that an individual named Kim Brummer has owned and
paid property taxes on property located in, Henderson, Clark County, Nevada since at least
May 12, 2020. *See Exhibits D.*

9. Upon information and belief, and based on Plaintiff’s identification of Clark
County, Nevada as her long-term place of residence and publicly available information
demonstrating Plaintiff’s ownership of, and payment of taxes on, property located in Clark

28 ¹ The parties communicated on June 2, 2022, and agreed to extend the deadline for defendant to
answer, move, or otherwise respond to the complaint to June 17, 2022. *See Exhibit A.*

1 County, Plaintiff is domiciled in Nevada. *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir.
2 1986) (explaining that courts may consider, *inter alia*, an individual's "current residence,"
3 "location of personal and real property," and "payment of taxes" when determining the
4 individual's domicile for purposes of diversity jurisdiction); *Owens v. Huntling*, 115 F.2d
5 160, 162 (9th Cir. 1940) ("[T]o constitute domicile there must be both the fact of a fixed
6 habitation of abode in a particular place, and an intention to remain there permanently or
7 indefinitely." (internal quotations omitted)).

8 10. Because Plaintiff is domiciled in Nevada, Plaintiff is a citizen of Nevada.
9 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) ("The natural person's
10 state citizenship is [] determined by her state of domicile.").

11 11. Biotronik is a corporation incorporated under the laws of Delaware, with its
12 principal place of business in Oregon. *See Complaint at ¶ 2; Exhibit E.*

13 12. Accordingly, there is complete diversity between the parties because Plaintiff
14 is a citizen of the United States and Nevada, and Biotronik is a Delaware corporation with
15 its principal place of business in Oregon. 28 U.S.C. § 1332(c)(1); 28 U.S.C. § 1441(b)(1)
16 ("In determining whether a civil action is removable on the basis of [diversity jurisdiction],
17 the citizenship of defendants sued under fictitious names shall be disregarded."); *see Hertz
18 Corp. v. Friend*, 559 U.S. 77, 92–95 (2010) (for diversity purposes, a corporation is a citizen
19 of its state of incorporation and principal place of business, which is "typically found at
20 [the] corporation's headquarters").

21 13. Plaintiff alleges that a cardiac implantable cardioverter/defibrillator allegedly
22 designed and/or manufactured by Biotronik malfunctioned and fired at least 15 electric
23 shocks to Plaintiff's heart while she was waiting for and being transported to a hospital in
24 an ambulance. Complaint ¶¶ 18-19. Plaintiff alleges she "endured several hours of torture,"
25 "endured, and continues to endure medical hardship, intervention, physical pain and
26 suffering, emotional distress and mental anguish," and "was forced to leave the workplace,
27 lapsing into an unplanned retirement that has left her emotionally crushed and languishing"
28 as a result. *See Complaint ¶¶ 3, 7, 21, 26-28.* Regarding Plaintiff's negligence and product

1 liability claims, she alleges she suffered “certain and severe injuries in an amount in excess
2 of” \$15,000, “shock – literal and figurative, emotional injury, suffering, worry, and anxiety,
3 in an amount in excess of” \$15,000, “pain, suffering, worry, anxiety, emotional district [sic],
4 all to her general damages in an amount in excess of” \$15,000, and “a loss of earning
5 capacity, all to her general damages in an amount in excess of” \$15,000. Complaint ¶¶ 39-
6 42, 56-59. Plaintiff’s breach of warranty claims and fraudulent misrepresentation claim
7 each allege she suffered “loss of earnings, loss of earning capacity, medical expenses and
8 other damages in an amount in excess of” \$15,000. Complaint ¶¶ 66, 72, 81.

9 14. Because Plaintiff alleges five categories of injuries, each of which allegedly
10 resulted in damages in excess of \$15,000, in addition to a demand for punitive damages and
11 attorneys’ fees, and based on Plaintiff’s allegations of severe and ongoing physical,
12 emotional, and financial injury, it is facially apparent from the Complaint that the amount
13 in controversy exceeds \$75,000. *See generally* Complaint; 28 U.S.C. § 1446(c)(2)(A)(ii)
14 (notice of removal may state amount in controversy if “State practice . . . permits recovery
15 of damages in excess of the amount demanded”); *Dart Cherokee Basin Operating Co., LLC*
16 *v. Owens*, 574 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need include only a
17 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”);
18 *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995) (“[A] court can determine
19 that removal [is] proper if it is facially apparent that the claims are likely above” the
20 jurisdictional threshold.), *methodology endorsed by Singer v. State Farm Mut. Auto. Ins.*
21 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997), *Matheson v. Progressive Specialty Ins. Co.*, 319
22 F.3d 1089, 1090 (9th Cir. 2003).

23 15. Because there is complete diversity of citizenship between the parties and the
24 amount in controversy exceeds \$75,000, this Court has jurisdiction pursuant to
25 28 U.S.C. § 1332(a).

26 16. Venue is proper in this District because the Complaint alleges the events
27 giving rise to Plaintiff’s claims occurred in Clark County, Nevada. *See*
28 28 U.S.C. §§ 1391(b)(2), 1441(a).

1 17. In accordance with 28 U.S.C. § 1446(d), written notice hereof is being
2 provided to Plaintiff and a copy of this Notice of Removal is being filed contemporaneously
3 with the State Court.

4 18. Pursuant to 28 U.S.C. § 1446(b), a copy of the Summons and Complaint filed
5 in the State Court and/or served on Biotronik are attached hereto as **Exhibits B and C**, and
6 the State Court Docket is attached hereto as **Exhibit F**.

7 19. By filing this Notice of Removal, Biotronik does not waive any defenses to
8 Plaintiff's Complaint.

9 WHEREFORE, Biotronik removes this action in its entirety from the Eighth Judicial
10 District Court, Clark County, Nevada, to the United States District Court for the District of
11 Nevada, and requests that this Court take any and all further action as is just or appropriate.

12 DATED this 10th day of June, 2022.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 _____
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